



February 13, 2009

HOUSE BILL No. 1176

DIGEST OF HB 1176 (Updated February 12, 2009 8:51 am - DI 101)

Citations Affected: IC 5-20; IC 23-2; IC 24-4.4; IC 24-5; IC 24-5.5; IC 24-9; IC 25-1; IC 25-34.1; IC 34-30.

Synopsis: Residential mortgage lending practices. Prohibits a creditor or loan broker from recommending or issuing to, or procuring on behalf of, a borrower a residential mortgage loan without grounds to believe that, as of the date or the projected date of the closing of the loan, the borrower has the ability repay the loan as written. Provides that in the case of a residential mortgage loan that: (1) is closed after June 30, 2009; and (2) has an interest rate that is subject to change during the term of the loan; the creditor may not contract for and may not charge the debtor a prepayment fee or penalty. Provides that for a home loan that is closed after December 31, 2009, the settlement service provider shall, upon the borrower's request, permit the borrower to inspect the closing documents with respect to the home loan not later than one business day before the closing of the loan, if the settlement service provider has received the needed information from the creditor or other parties to the transaction. Provides that if the closing documents are not made available within the prescribed time to a borrower who has requested to inspect them, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the home loan or into the purchase contract. Provides that if the terms of the home loan set forth in the documents made available to the borrower one business day before the closing differ from the terms of the home loan presented to the borrower at the time of the closing: (1) the attorney general's homeowner protection unit (unit) may investigate the circumstances surrounding the home loan and take

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Effective: Upon passage; July 1, 2008; July 1, 2009.

Riecken, Barnes, Murphy

January 12, 2009, read first time and referred to Committee on Financial Institutions.
February 12, 2009, amended, reported — Do Pass.

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certain enforcement actions; and (2) the borrower is entitled to bring an action for certain relief against the creditor if the creditor does not conform the terms of the home loan to the terms set forth in the documents made available to the borrower one business day before the closing. Prohibits certain interested persons in a real estate transaction from influencing or attempting to influence a real estate appraiser or an appraisal. Sets forth certain acts that constitute a prohibited attempt to influence an appraiser or an appraisal. Provides that a creditor that issues mortgage loans in Indiana shall, not later than three business days after receiving a written application for a mortgage loan from a borrower, provide to the borrower or a notice that includes: (1) contact information for unit; and (2) a statement that the borrower may contact the unit to report an attempt or action taken, or suspected to have been taken, to influence an appraisal prepared in connection with a real estate transaction. Provides that the annual report provided by the mortgage lending and fraud prevention task force to the legislative council must include the following information for the most recent state fiscal year: (1) The number of complaints or reports received by the unit concerning an attempt or action taken, or suspected to have been taken, to influence an appraisal prepared in connection with a real estate transaction. (2) A breakdown of the sources of the complaints or reports, based on the complainants' interest in or relationship to the real estate transactions upon which the complaints or reports are based. (3) A description of any disciplinary or enforcement actions taken, or criminal prosecutions pursued, in connection with the complaints or reports received. Sets forth certain penalties and enforcement procedures for violations of the provisions concerning real estate appraisals. Provides an individual cause of action for a person aggrieved by a violation of the provisions. Requires a foreclosure consultant to retain all records related to services performed on behalf of a homeowner for at least three years after the termination or conclusion of the foreclosure consultant contract. Prohibits a person from engaging in, or soliciting to engage in, a real estate or mortgage transaction without a permit or license required by law. Prohibits a person from making certain representations with respect to: (1) a mortgage or real estate transaction; or (2) the property that is the subject of the transaction; if the representation is not true and the person knows or reasonably should know that the representation is not true. Provides that a practitioner of a licensed profession who has been subjected to disciplinary sanctions by the board that regulates the profession may be required to pay the costs of any real estate review appraisal obtained in connection with the disciplinary proceedings. Provides that a violation of the statutes concerning: (1) credit service organizations; and (2) mortgage rescue protection fraud; by a person licensed or required to be licensed as a real estate salesperson or broker is a violation of the statute governing the regulation of real estate salespersons and brokers and is subject to certain specified enforcement procedures and sanctions.

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February 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1176

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-20-1-27, AS AMENDED BY P.L.145-2008,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 27. (a) The home ownership education account
4 within the state general fund is established to support the home
5 ownership education programs established under section 4(d) of this
6 chapter. The account is administered by the authority.
7 (b) The home ownership education account consists of ~~(1) fees~~
8 ~~collected under IC 24-9-9; and (2)~~ civil penalties imposed and
9 collected under:
10 ~~(A) (1)~~ IC 6-1.1-12-43(g)(2)(B); ~~or~~
11 ~~(B) (2)~~ IC 27-7-3-15.5(e); ~~or~~
12 **(3) IC 24-9-4.5-9(b).**
13 (c) The expenses of administering the home ownership education
14 account shall be paid from money in the account.
15 (d) The treasurer of state shall invest the money in the home

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ownership education account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

SECTION 2. IC 23-2-5-15, AS AMENDED BY P.L.230-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. **(a) This section does not apply to a violation or an alleged violation of section 20(f)(9) of this chapter.**

(b) Any person who violates this chapter or any rule or regulation adopted under this chapter, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. If a person violates any provision of this chapter, or any rule or regulation adopted under this chapter, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

SECTION 3. IC 23-2-5-20, AS AMENDED BY P.L.145-2008, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. **(a) As used in this section, "ability to repay", with respect to a home loan, including the consolidation or refinancing of an existing home loan, means the following factors likely to affect a borrower's ability to repay the home loan at the loan's full monthly cost:**

(1) The borrower's:

(A) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;

(B) expenses;

(C) assets; and

(D) liabilities, including any loan obligations that have been incurred but are not yet due and payable;

as of the date, or the projected date, of the closing of the home loan.

(2) The borrower's credit history.

(b) As used in this section, "borrower" includes a prospective borrower, where appropriate.

(c) As used in this section, "full monthly cost", with respect to a home loan, means the maximum monthly payment that the borrower will be required to pay with respect to the home loan, calculated as the total of the following monthly costs that the borrower will be responsible for paying during the term of the home loan, to the extent determinable as of the date, or the

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projected date, of the closing of the home loan:

(1) Principal plus interest at the home loan's fully indexed rate.

(2) Property taxes. If the home loan will be secured by a new home, the construction of which will not be complete as of the date, or the projected date, of the closing of the home loan, the property taxes considered for purposes of this subsection must be an estimate that:

(A) is based on the property taxes that were most recently due and payable with respect to completely constructed, comparable new homes located in the area in which the new home is or will be located; and

(B) is not based on the assessed value of unimproved real estate.

(3) Homeowners insurance premiums.

(4) Private mortgage insurance premiums.

(5) Premiums for:

(A) credit life insurance;

(B) credit disability insurance;

(C) credit unemployment insurance; or

(D) other consumer credit insurance;

that the borrower has agreed to pay.

(6) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(d) As used in this section, "fully indexed rate", with respect to a home loan, means:

(1) for a fixed rate home loan in which the interest rate will not vary during the term of the loan, the rate as of the date, or the projected date, of closing;

(2) for a home loan in which the interest varies according to an index, the sum of the index rate as of the date, or the projected date, of closing plus the maximum margin permitted at any time under the loan agreement; or

(3) for all other home loans in which the rate may vary at any time during the term of the loan, the maximum rate that may be charged during the term of the loan.

(e) As used in this section, "home loan" has the meaning set forth in IC 24-9-2-9.

(f) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

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- (1) Employ any device, scheme, or artifice to defraud.
 - (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
 - (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
 - (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.
 - (5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.
 - (6) File or cause to be filed with a county recorder any document that the person knows:
 - (A) contains:
 - (i) a misstatement; or
 - (ii) an untrue statement; of a material fact; or
 - (B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.
 - (7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers, unless the personal information is used in an activity authorized by the borrower or prospective borrower under one (1) or more of the following circumstances:
 - (A) The personal information is:
 - (i) included on an application form or another form; or
 - (ii) transmitted as part of an application process or an enrollment process.
 - (B) The personal information is used to obtain a consumer report (as defined in IC 24-5-24-2) for an applicant for credit.
 - (C) The personal information is used to establish, amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the personal information.
- However, personal information allowed to be disclosed under this subdivision may not be printed in whole or in part on a postcard or other mailer that does not require an envelope, or in a manner that makes the personal information visible on an envelope or a mailer without the envelope or mailer being opened.
- (8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective

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borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Recommend a home loan to, or procure a home loan on behalf of, a borrower without grounds to believe that, as of the date or the projected date of the closing of the home loan, the borrower has the ability to repay the loan as written.

~~(b)~~ (g) A person who commits an act described in subsection ~~(a)~~ (f) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 4. IC 24-4.4-2-201, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that:

(a) is closed after June 30, 2009; and

(b) has an interest rate that is subject to change at one (1) or more times during the term of the first lien mortgage transaction.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the debtor a prepayment fee or penalty.

~~(2)~~ (3) This subsection applies to a first lien mortgage transaction

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with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 5. IC 24-4.4-2-201.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 201.5. (1) As used in this section, "ability to repay", with respect to a first lien mortgage transaction, including the consolidation or refinancing of an existing first lien mortgage transaction, means the following factors likely to affect a debtor's ability to repay the first lien mortgage transaction at the first lien mortgage transaction's full monthly cost:**

(a) The debtor's:

- (i) income, not including nonrecurring overtime payments, nonrecurring seasonal compensation, or other irregular income;**
- (ii) expenses;**
- (iii) assets; and**
- (iv) liabilities, including any loan obligations that have been incurred but are not yet due and payable; as of the date, or the projected date, of the closing of the first lien mortgage transaction.**

(b) The debtor's credit history.

(2) As used in this section, "debtor" includes a prospective debtor, where appropriate.

(3) As used in this section, "full monthly cost", with respect to

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a first lien mortgage transaction, means the maximum monthly payment that the debtor will be required to pay with respect to the first lien mortgage transaction, calculated as the total of the following monthly costs that the debtor will be responsible for paying during the term of the first lien mortgage transaction, to the extent determinable as of the date, or the projected date, of the closing of the first lien mortgage transaction:

(a) Principal plus interest at the first lien mortgage transaction's fully indexed rate.

(b) Property taxes. If the first lien mortgage transaction will be secured by a new dwelling, the construction of which will not be complete as of the date, or the projected date, of the closing of the first lien mortgage transaction, the property taxes considered for purposes of this subsection must be an estimate that:

(A) is based on the property taxes that were most recently due and payable with respect to completely constructed, comparable new homes located in the area in which the new dwelling is or will be located; and

(B) is not based on the assessed value of unimproved real estate.

(c) Homeowners insurance premiums.

(d) Private mortgage insurance premiums.

(e) Premiums for:

(i) credit life insurance;

(ii) credit disability insurance;

(iii) credit unemployment insurance; or

(iv) other consumer credit insurance;

that the debtor has agreed to pay.

(f) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(4) As used in this section, "fully indexed rate", with respect to a first lien mortgage transaction, means:

(a) for a fixed rate first lien mortgage transaction in which the interest rate will not vary during the term of the first lien mortgage transaction, the rate as of the date, or the projected date, of closing;

(b) for a first lien mortgage transaction in which the interest varies according to an index, the sum of the index rate as of the date, or the projected date, of closing plus the maximum margin permitted at any time under the loan agreement; or

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(c) for all other first lien mortgage transactions in which the rate may vary at any time during the term of the first lien mortgage transaction, the maximum rate that may be charged during the term of the first lien mortgage transaction.

(5) A creditor may not recommend or issue a first lien mortgage transaction to a debtor without grounds to believe that, as of the date or the projected date of the closing of the first lien mortgage transaction, the debtor has the ability to repay the first lien mortgage transaction as written.

SECTION 6. IC 24-4.4-3-113, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 113. The grant of powers to the department under this article does not affect remedies available to debtors under this article or under other principles of law or equity. **However, a creditor is not liable to:**

- (a) a debtor;
- (b) a subsequent purchaser of property that is the subject of a first lien mortgage transaction; or
- (c) any other person;

for a violation or an alleged violation of IC 24-4.4-2-201.5(5).

SECTION 7. IC 24-5-23.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 23.5. Real Estate Appraisals

Sec. 1. (a) As used in this chapter, "appraisal" means an opinion or estimation of the value of real property that is the subject of a real estate transaction.

(b) The term includes the following:

- (1) The results of an automated valuation model.
- (2) A broker's price opinion.
- (3) A desktop evaluation.

Sec. 2. As used in this chapter, "appraisal company" means a sole proprietorship, firm, corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, or other business unit or association that:

- (1) performs appraisals on a regular basis for compensation through one (1) or more owners, officers, employees, or agents; or
- (2) holds itself out to the public as performing appraisals.

Sec. 3. (a) As used in this chapter, "creditor" means a person:

- (1) that regularly engages in the extension of mortgage loans that are subject to a credit service charge or loan finance

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charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and

(2) to whom the obligation arising from a mortgage loan is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.

(b) The term does not include a person described in:

(1) IC 24-9-2-6(a)(2) if the person described in IC 24-9-2-6(a)(2) is not the person extending the credit in the transaction; or

(2) IC 24-9-2-6(b).

Sec. 4. As used in this chapter, "interested person", with respect to a real estate transaction, means any person that is a party to or has a pecuniary interest in the real estate transaction, including any of the following:

(1) The creditor in a mortgage loan.

(2) The borrower in a mortgage loan.

(3) A buyer in the transaction.

(4) A seller in the transaction.

(5) A loan broker, a loan originator, a principal manager, or any other person licensed or certified, or required to be licensed or certified, under IC 23-2-5.

(6) A real estate:

(A) broker; or

(B) salesperson;

licensed under IC 25-34.1, or any other person required to be licensed under IC 25-34.1.

(7) A real estate appraiser.

(8) A provider of relocation services.

(9) A settlement service provider not otherwise described in this section.

Sec. 5. (a) As used in this chapter, "mortgage loan" means a loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(b) The term includes the following:

(1) A home loan subject to IC 24-9.

(2) A loan described in IC 24-9-1-1, to the extent allowed under federal law.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a

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mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against an interest in real property in Indiana.

(6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land in Indiana upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes. The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

Sec. 6. As used in this chapter, "real estate appraiser" means a person who develops an opinion of or estimates the value of real property in a real estate transaction in Indiana, regardless of whether the person is licensed or certified, or required to be licensed or certified, under the real estate appraiser licensure and certification program established under IC 25-34.1-3-8.

Sec. 7. As used in this chapter, "real estate transaction" means a transaction that involves one (1) or both of the following:

(1) The sale or lease of any legal or equitable interest in real estate located in Indiana.

(2) The issuance, refinancing, or consolidation of a mortgage loan.

Sec. 8. (a) As used in this chapter, "settlement service provider" means a person that provides any settlement service (as defined in 24 CFR 3500.2) in connection with the closing of a real estate transaction.

(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

Sec. 9. (a) An interested person in a real estate transaction shall not influence or attempt to influence:

(1) the independent judgment of a real estate appraiser with respect to the value of the real estate that is the subject of the transaction; or

(2) the development, reporting, result, or review of an appraisal prepared in connection with the transaction; through bribery, coercion, extortion, intimidation, collusion, or any other manner.

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(b) The following acts are prohibited by this section:

(1) Withholding or reducing, or threatening to withhold or reduce, the payment of an appraisal fee based on the opinion, conclusion, or valuation determined by a real estate appraiser.

(2) Withholding or threatening to withhold future business for a real estate appraiser or an appraisal company based on the opinion, conclusion, or valuation determined by a real estate appraiser, including removing a real estate appraiser or an appraisal company from a list of approved appraisers used by the interested party in real estate transactions.

(3) Expressly or impliedly promising future business, promotions, or increased compensation for a real estate appraiser or an appraisal company based on the opinion, conclusion, or valuation determined by a real estate appraiser.

(4) Conditioning payment of an appraisal fee or a bonus on the opinion, conclusion, or valuation to be reached by a real estate appraiser.

(5) Requesting that a real estate appraiser provide a predetermined opinion, conclusion, or valuation.

(6) Providing a real estate appraiser with:

(A) an anticipated, estimated, encouraged, or desired valuation for the subject real estate; or

(B) a proposed or target amount to be loaned to the borrower in a mortgage loan connected with the transaction.

However, this subdivision does not prohibit a person from providing a real estate appraiser with a copy of the purchase agreement in a transaction involving the sale of real estate.

(7) Ordering, obtaining, using, or paying for a second or subsequent appraisal in a transaction involving the issuance, refinancing, or consolidation of a mortgage loan unless:

(A) the interested person:

(i) has a reasonable basis to believe that the initial appraisal was flawed or tainted; and

(ii) notes the basis for that belief in the loan file; or

(B) the second or subsequent appraisal is performed in connection with a prefunding or postfunding appraisal review program or quality control process established by the creditor in the mortgage loan.

(c) This section does not prohibit an interested person from

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requesting that a real estate appraiser:

- (1) consider additional appropriate information concerning the real estate that is the subject of the transaction;
- (2) provide further detail, substantiation, or explanation for the real estate appraiser's opinion, conclusion, or valuation; or
- (3) correct factual errors in an appraisal report.

Sec. 10. (a) This subsection applies to a creditor that issues mortgage loans in Indiana on a regular basis. A creditor to which this subsection applies shall, not later than three (3) business days after receiving a written application for a mortgage loan from a borrower or prospective borrower, provide to the borrower or prospective borrower a notice that includes:

- (1) contact information for the homeowner protection unit established by the attorney general under IC 4-6-12, including:
 - (A) an electronic mail address for the homeowner protection unit; and
 - (B) the toll free telephone number described in IC 4-6-12-3.5; and
- (2) a statement that the borrower or prospective borrower may contact the homeowner protection unit to report an attempt or action taken, or suspected to have been taken, to influence, in a manner prohibited by this chapter, an appraisal prepared in connection with a real estate transaction.

The creditor shall provide the notice required by this subsection by delivering it to the borrower or prospective borrower or placing it in the United States mail to the borrower or prospective borrower within the time prescribed by this subsection.

(c) Beginning in 2009, the report provided by the mortgage lending and fraud prevention task force to the legislative council under P.L.145-2008, SECTION 35, must include the following information:

- (1) The total number of complaints or reports:
 - (A) received by the homeowner protection unit during the most recent state fiscal year; and
 - (B) concerning an attempt or action taken, or suspected to have been taken, to influence, in a manner prohibited by this chapter, an appraisal prepared in connection with a real estate transaction.
- (2) From the total number of complaints or reports reported

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under subdivision (1), a breakdown of the sources of the complaints or reports, classified according to the complainants' interest in or relationship to the real estate transactions upon which the complaints or reports are based.

(3) A description of any:

(A) disciplinary or enforcement actions taken; or

(B) criminal prosecutions pursued;

by the homeowner protection unit or any entity listed in IC 4-6-12-4 and having jurisdiction in the matter, as applicable, in connection with the complaints or reports reported under subdivision (1).

The homeowner protection unit shall make available to the mortgage lending and fraud prevention task force any information necessary to provide the information required under this subsection in the task force's report to the legislative council.

Sec. 11. (a) A person that knowingly or intentionally violates section 9 of this chapter commits:

(1) a Class A misdemeanor; and

(2) an act that is:

(A) actionable by the attorney general under IC 24-5-0.5; and

(B) subject to the penalties listed in IC 24-5-0.5.

Whenever a judgment is entered for an offense described in subdivision (1), the court shall add to any fine imposed the amount of any fee or other compensation earned by the person in the commission of the offense. Each transaction that violates section 9 of this chapter constitutes a separate offense.

(b) The attorney general or the prosecuting attorney of any county in which a violation occurs may maintain an action in the name of the state of Indiana to enjoin a person from violating this chapter. A court in which the action is brought may:

(1) issue an injunction;

(2) order the person to make restitution to a party aggrieved by the person's violation of this chapter;

(3) order the person to reimburse the attorney general or a prosecuting attorney for the costs of investigating and prosecuting the violation; and

(4) impose a civil penalty of not more than ten thousand dollars (\$10,000) per violation.

(c) A person that violates an injunction issued under this section is subject to a civil penalty of not more than ten thousand dollars (\$10,000) per violation. The court that issues the injunction retains

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jurisdiction over a proceeding seeking the imposition of a civil penalty under this subsection.

(d) A civil penalty imposed and collected under this section shall be deposited in the investigative fund established by IC 25-34.1-8-7.5.

(e) The enforcement procedures established by this section are cumulative and an enforcement procedure available under this section is supplemental to any other enforcement procedure available under:

(1) this section; or

(2) any other state or federal law, rule, or regulation; for a violation of this chapter.

Sec. 12. (a) Subject to subsection (b), a person who is aggrieved by a violation of this chapter may bring an action, in a court having jurisdiction, against any person responsible for the violation. The court may award one (1) or more of the following to a person who brings an action under this section:

(1) Actual damages, including consequential damages. A complainant is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages of at least one thousand five hundred dollars (\$1,500) and not more than seven thousand five hundred dollars (\$7,500) for each offense.

(3) The complainant's reasonable costs and attorney's fees.

(4) Injunctive, declaratory, and other equitable relief as the court determines appropriate.

A person is not required to exhaust any administrative remedies under this chapter or under any other applicable law before bringing an action under this subsection. However, a person may not bring a class action for a violation of this chapter.

(b) An action under subsection (a) must be brought not later than five (5) years after the violation occurs. However, this subsection does not prevent a borrower in a mortgage loan from asserting:

(1) in any action to collect a debt arising from the mortgage loan that is brought by a creditor or other person more than five (5) years after an alleged violation of this chapter occurred; and

(2) as a matter of defense by recoupment or set off; that a violation of this chapter occurred.

(c) An award of damages under subsection (a) has priority over any civil penalty imposed for a violation of this chapter.

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(d) The remedies provided in this section are cumulative and a remedy available under this section to a person aggrieved by a violation of this chapter is supplemental to any other remedies available to the person under:

(1) this section; or

(2) any other state or federal law, rule, or regulation; for the violation.

SECTION 8. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A foreclosure consultant shall retain all records and documents, including the foreclosure consultant contract, related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of the foreclosure consultant contract entered into by the foreclosure consultant and the homeowner.

SECTION 9. IC 24-9-1-1, AS AMENDED BY P.L.181-2006, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. Except for ~~IC 24-9-3-7(3)~~ **IC 24-9-3-7(c)(3)** and **IC 24-9-3-7(c)(4)**, this article does not apply to:

(1) a loan made or acquired by a person organized or chartered under the laws of this state, any other state, or the United States relating to banks, trust companies, savings associations, savings banks, credit unions, or industrial loan and investment companies; or

(2) a loan:

(A) that can be purchased by the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the Federal Home Loan Bank;

(B) to be insured by the United States Department of Housing and Urban Development;

(C) to be guaranteed by the United States Department of Veterans Affairs;

(D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;

(E) to be funded by the Indiana housing and community development authority; or

(F) with a principal amount that exceeds the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association.

SECTION 10. IC 24-9-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) Except as provided in subsection (b), "points and fees" means the total of the

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1 following:

2 (1) Points and fees (as defined in 12 CFR 226.32(b)(1) on January
3 1, 2004).

4 (2) All compensation paid directly or indirectly to a mortgage
5 broker, including a broker that originates a loan in the broker's
6 own name.

7 As used in subdivision (2), "compensation" does not include a payment
8 included in subdivision (1).

9 (b) The term does not include the following:

10 (1) Bona fide discount points.

11 (2) An amount not to exceed one and one-half (1 1/2) points in
12 indirect broker compensation, if the terms of the loan do not
13 include:

14 **(A) a prepayment penalty, in the case of a home loan**
15 **described in IC 24-9-3-6(b); or**

16 **(B) a prepayment penalty that exceeds two percent (2%) of the**
17 **home loan ~~principle~~, principal, in the case of a home loan**
18 **other than a home loan described in IC 24-9-3-6(b).**

19 (3) Reasonable fees paid to an affiliate of the creditor.

20 (4) Interest prepaid by the borrower for the month in which the
21 home loan is closed.

22 SECTION 11. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
24 1, 2009]: **Sec. 1.1. (a) As used in this section, "ability to repay",**
25 **with respect to a home loan, including the consolidation or**
26 **refinancing of an existing home loan, means the following factors**
27 **likely to affect a borrower's ability to repay the home loan at the**
28 **home loan's full monthly cost:**

29 (1) The borrower's:

30 **(A) income, not including nonrecurring overtime**
31 **payments, nonrecurring seasonal compensation, or other**
32 **irregular income;**

33 **(B) expenses;**

34 **(C) assets; and**

35 **(D) liabilities, including any loan obligations that have**
36 **been incurred but are not yet due and payable;**
37 **as of the date, or the projected date, of the closing of the home**
38 **loan.**

39 (2) The borrower's credit history.

40 (b) As used in this section, "borrower" includes a prospective
41 borrower, where appropriate.

42 (c) As used in this section, "full monthly cost", with respect to

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a home loan means the maximum monthly payment that the borrower will be required to pay with respect to the home loan, calculated as the total of the following monthly costs that the borrower will be responsible for paying during the term of the home loan, to the extent determinable as of the date, or the projected date, of the closing of the home loan:

- (1) Principal plus interest at the home loan's trigger rate.
- (2) Property taxes. If the home loan will be secured by a new home, the construction of which will not be complete as of the date, or the projected date, of the closing of the home loan, the property taxes considered for purposes of this subsection shall be an estimate that:
 - (A) is based on the property taxes that were most recently due and payable with respect to completely constructed, comparable new homes located in the area in which the new home is or will be located; and
 - (B) is not based on the assessed value of unimproved real estate.
- (3) Homeowners insurance premiums.
- (4) Private mortgage insurance premiums.
- (5) Premiums for:
 - (A) credit life insurance;
 - (B) credit disability insurance;
 - (C) credit unemployment insurance; or
 - (D) other consumer credit insurance;
 that the borrower has agreed to pay.
- (6) Homeowners and other assessments, such as special assessments, condominium fees, and homeowners association fees.

(d) A creditor may not recommend or issue to, or procure on behalf of, a borrower a home loan without grounds to believe that, as of the date or the projected date of the closing of the home loan, the borrower has the ability repay the home loan as written.

SECTION 12. IC 24-9-3-6, AS AMENDED BY P.L.145-2008, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide a payoff balance not later than ten (10) calendar days after the request is received by the creditor. For purposes of this subsection, "fee" does not include actual charges incurred by a creditor for express or priority delivery of home loan documents to the borrower if such

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delivery is requested by the borrower.

(b) This subsection applies to a home loan, or the refinancing or consolidation of a home loan, that:

(1) is closed after June 30, 2009; and

(2) has an interest rate that is subject to change at one (1) or more times during the term of the home loan.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the borrower a prepayment fee or penalty.

~~(b)~~ **(c)** This subsection applies to a home loan with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 13. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. **(a) As used in this section, "mortgage transaction" includes the following:**

(1) A home loan subject to this article.

(2) A loan described in IC 24-9-1-1.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

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(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land in Indiana upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes. The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

(b) As used in this section, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate:

- (1) that is located in Indiana;
- (2) upon which there is a dwelling; and
- (3) that is classified as residential for property tax purposes.

(c) A person may not:

- (1) divide a loan transaction into separate parts with the intent of evading a provision of this article;
- (2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or
- (3) engage in, a deceptive act in connection with a: (A) home loan; or (B) loan described in IC 24-9-1-1; or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law; or
- (4) with respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has the sponsorship or approval of a particular person or entity that it does not have and that the person knows or reasonably should know it does not have; or

(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have.

SECTION 14. IC 24-9-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. A person seeking to

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enforce section ~~7(3)~~ **7(c)(3) or 7(c)(4)** of this chapter may not knowingly or intentionally intimidate, coerce, or harass another person.

SECTION 15. IC 24-9-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The following additional limitations and prohibited practices apply to a high cost home loan:

(1) A creditor making a high cost home loan may not directly or indirectly finance any points and fees.

(2) **This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b).** Prepayment fees or penalties may not be included in the loan documents for a high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the high cost home loan amount prepaid during the first twenty-four (24) months after the high cost home loan closing.

(3) **This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b).** A prepayment penalty may not be contracted for after the second year following the high cost home loan closing.

(4) **This subdivision does not apply to a high cost home loan described in IC 24-9-3-6(b).** A creditor may not include a prepayment penalty fee in a high cost home loan unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of the offer must be made in writing and must be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

"LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender."

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as defined in

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1 IC 24-9-2-8."

2 (7) A creditor making a high cost home loan may not finance,
3 directly or indirectly, any life or health insurance.

4 SECTION 16. IC 24-9-4-8 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A creditor may
6 not make a high cost home loan without regard to repayment ability, **as**
7 **required under IC 24-9-3-1.1.**

8 (b) If a creditor presents evidence that the creditor:

9 (1) followed commercially reasonable practices in determining
10 the borrower's debt to income ratio; **and**

11 (2) **had grounds to believe that, as of the date or the projected**
12 **date of the closing of the home loan, the borrower had the**
13 **ability repay the home loan as written, as required under**
14 **IC 24-9-3-1.1;**

15 there is a rebuttable presumption that the creditor made the high cost
16 home loan with due regard to repayment ability. ~~For purposes of this~~
17 ~~section, there is a rebuttable presumption that the borrower's statement~~
18 ~~of income provided to the creditor is true and complete.~~

19 (c) **For purposes of subsection (b)(1),** commercially reasonable
20 practices include the use of:

21 (1) the debt to income ratio:

22 (A) listed in 38 CFR 36.4337(c)(1); and

23 (B) defined in 38 CFR 36.4337(d); and

24 (2) the residual income guidelines established under:

25 (A) 38 CFR 36.4337(e); and

26 (B) United States Department of Veterans Affairs form
27 26-6393.

28 SECTION 17. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE
29 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
30 UPON PASSAGE]:

31 **Chapter 4.5. Residential Real Estate Closings**

32 **Sec. 1. This chapter applies to a home loan closing that takes**
33 **place after December 31, 2009.**

34 **Sec. 2. As used in this chapter, "borrower" includes a**
35 **prospective borrower.**

36 **Sec. 3. As used in this chapter, "closing documents" refers to at**
37 **least the following documents from the set of documents provided**
38 **to a borrower at the closing of a home loan:**

39 (1) **The HUD-1 or HUD-1A settlement statement required**
40 **under the federal Real Estate Settlement Procedures Act (12**
41 **U.S.C. 2601 et seq.), as amended.**

42 (2) **The disclosures required under the federal Truth in**

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Lending Act (15 U.S.C. 1601 et seq.), as set forth in 15 U.S.C. 1638(a).

Sec. 4. As used in this chapter, "creditor" includes a mortgage broker in any home loan transaction in which the mortgage broker is required or allowed to provide the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 5. (a) As used in this chapter, "settlement service provider" means a person that provides any settlement service (as defined in 24 CFR 3500.2) in connection with the closing of a real estate transaction.

(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

Sec. 6. (a) Not later than October 1, 2009, the homeowner protection unit established by the attorney general under IC 4-6-12 shall prescribe a form that:

- (1) shall be used by creditors under subsection (b); and
- (2) informs a borrower of the borrower's rights under section 7 of this chapter.

(b) A creditor that seeks to issue a home loan in Indiana after December 31, 2009, shall provide the notice described in subsection (a) to the borrower at the same time that the creditor provides the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

Sec. 7. (a) Subject to subsections (c) and (d), a settlement service provider shall, upon the borrower's request, permit the borrower to inspect the closing documents with respect to the home loan not later than one (1) business day before the closing of a home loan.

(b) The settlement service provider shall make the closing documents available to the borrower for inspection under subsection (a):

- (1) at the office of the creditor or the settlement service provider;
- (2) through the United States mail;
- (3) by facsimile; or
- (4) through any other commercially reasonable means.

(c) A settlement service provider's duty to make closing documents available to a borrower within the time set forth in subsection (a) applies only to the extent that the settlement service provider has received the needed information from the creditor making the home loan or from any other party having the needed information. If the creditor or other parties:

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1 (1) fail to provide the needed information; or
 2 (2) provide information that is not complete;
 3 the settlement service provider shall notify the borrower of that
 4 fact as soon as the settlement service provider determines that the
 5 needed information will not be available or is incomplete, but in
 6 any case not later than the end of the business day before the
 7 closing of the home loan. The notice required under this subsection
 8 must be reduced to writing and provided to the borrower at or
 9 before the time of closing.

10 (d) A borrower may waive the right under subsection (a) to
 11 inspect the closing documents with respect to a home loan by
 12 providing a written notice of waiver to the settlement service
 13 provider at or before the time of closing.

14 (e) If the borrower:

15 (1) requests to inspect the closing documents under subsection
 16 (a); and

17 (2) the settlement service provider:

18 (A) does not permit the borrower to inspect the closing
 19 documents within the time specified in subsection (a) or in
 20 the manner specified in subsection (b); or

21 (B) notifies the borrower under subsection (c) that:

22 (i) the settlement service provider has not received the
 23 needed information to allow the borrower to inspect the
 24 closing documents under subsection (a); or

25 (ii) the information that the settlement service provider
 26 has received is incomplete;

27 the borrower is entitled to delay or reschedule the closing without
 28 penalty and without forfeiting the right to enter into the home loan
 29 or, in the case of a purchase money home loan, into the purchase
 30 contract. A borrower that exercises the right to delay or reschedule
 31 a closing under this subsection must offer to reschedule the closing
 32 for a date that is not later than three (3) business days after the
 33 date of the closing that the borrower seeks to reschedule, subject
 34 to the availability of the other parties to the transaction.

35 (f) Subject to subsections (g) and (h) and section 8 of this
 36 chapter, if the terms of the home loan set forth in the closing
 37 documents made available to the borrower under subsection (a)
 38 differ from the terms of the home loan presented to the borrower
 39 at the time of the closing, the borrower is entitled to:

40 (1) delay or reschedule the closing without penalty and
 41 without forfeiting the right to enter into the home loan or, in
 42 the case of a purchase money home loan, into the purchase

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contract; and

(2) if the creditor does not conform the terms of the home loan to the terms set forth in the closing documents made available to the borrower under subsection (a), bring an action against the creditor (or against any subsequent holder or assignee of the home loan if the home loan proceeds to closing) for:

(A) actual damages, including:

(i) consequential damages; and

(ii) if the home loan does not proceed to closing, any damages suffered by the borrower as a result of not entering into the home loan or into the purchase contract;

(B) if the home loan proceeds to closing, statutory damages equal to two (2) times the difference between:

(i) the finance charges set forth in the actual loan documents; minus

(ii) the finance charges set forth in the closing documents made available to the borrower under subsection (a);

if the finance charges set forth in the actual loan documents are greater than finance charges set forth in the closing documents made available to the borrower under subsection (a);

(C) reasonable costs and attorney's fees; and

(D) injunctive, declaratory, and other equitable relief as the court determines appropriate.

A borrower that exercises the right to delay or reschedule a closing under subdivision (1) must offer to reschedule the closing for a date that is not later than three (3) business days after the date of the closing that the borrower seeks to reschedule, subject to the availability of the other parties to the transaction.

(g) For purposes of subsection (f), "terms", with respect to a home loan, means the following:

(1) The following terms, as set forth in the disclosures provided to the borrower under the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) and as described in 15 U.S.C. 1638(a):

(A) The identity of the creditor.

(B) The amount financed.

(C) The finance charge. For purposes of this clause, the finance charge presented to the borrower at the time of closing is not considered to differ from the finance charge set forth in the closing documents made available to the

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borrower under subsection (a) if the difference between the two (2) charges:

(i) is within the allowable tolerances for accuracy set forth in 15 U.S.C. 1605; or

(ii) is the result of the expiration of an interest rate lock-in period, or other interest rate guarantee, between the time of the borrower's inspection of the documents and the time of the closing.

(D) The finance charge expressed as an annual percentage rate. For purposes of this clause, the annual percentage rate presented to the borrower at the time of closing is not considered to differ from the annual percentage rate set forth in the closing documents made available to the borrower under subsection (a) if the difference between the two (2) rates:

(i) is within the allowable tolerances set forth in 15 U.S.C. 1606; or

(ii) is the result of the expiration of an interest rate lock-in period, or other interest rate guarantee, between the time of the borrower's inspection of the documents and the time of the closing.

(E) The total of payments. For purposes of this clause, the total of payments presented to the borrower at the time of closing is not considered to differ from the total of payments set forth in the closing documents made available to the borrower under subsection (a) if the difference between the two (2) totals is the result of the expiration of an interest rate lock-in period, or other interest rate guarantee, between the time of the borrower's inspection of the documents and the time of the closing.

(F) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(G) Any dollar charge or percentage amount that may be imposed by the creditor solely on account of a late payment, other than a deferral or extension charge.

(2) Any terms identified as loan terms in the HUD-1 or HUD-1A settlement statement required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended.

(h) An action under subsection (f)(2) must be brought not later than five (5) years after:

(1) the closing of the home loan, if the home loan proceeds to

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1 closing; or

2 (2) the date of the first scheduled closing with respect to the
3 home loan, if the home loan does not proceed to closing.

4 Sec. 8. (a) In addition to the remedies available to the borrower
5 under section 7(f) of this chapter, if the terms of a home loan set
6 forth in the closing documents made available to a borrower under
7 section 7(a) of this chapter differ from the terms of the home loan
8 presented to the borrower at the time of the closing, the attorney
9 general, acting through the attorney general's homeowner
10 protection unit established under IC 4-6-12, may, upon the
11 attorney general's own motion or upon receiving a complaint from
12 the borrower or any other person involved in the closing,
13 investigate the circumstances surrounding the home loan to
14 determine:

15 (1) the reasons for the discrepancy between the terms of the
16 home loan set forth in the closing documents made available
17 to the borrower under section 7(a) of this chapter and the
18 terms of the home loan presented to the borrower at the time
19 of closing;

20 (2) whether there was an attempt by the creditor to deceive or
21 defraud the borrower by presenting different terms at the
22 time of the closing;

23 (3) whether the creditor involved in the closing has engaged
24 in a pattern or practice of presenting loan terms at the time of
25 closing that differ from the loan terms set forth in closing
26 documents made available to borrowers before scheduled
27 closings under section 7(a) of this chapter; and

28 (4) whether the creditor's actions in the case being
29 investigated constitute a violation of:

30 (A) the federal Truth in Lending Act (15 U.S.C. 1601 et
31 seq.);

32 (B) the federal Real Estate Settlement Procedures Act (12
33 U.S.C. 2601 et seq.), as amended; or

34 (C) any other federal laws or regulations concerning
35 mortgage lending;

36 as authorized by IC 4-6-12-3. In conducting an investigation under
37 this section, the attorney general may cooperate with any entity
38 described in IC 4-6-12-4 that may have jurisdiction in the matter,
39 as authorized by IC 4-6-12-5.

40 (b) Subject to subsection (d), if, after an investigation conducted
41 under subsection (a) the attorney general determines that:

42 (1) there was an attempt by the creditor to deceive or defraud

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the borrower by presenting different terms at the time of the closing; or

(2) the creditor involved in the closing has engaged in a pattern or practice of presenting loan terms at the time of closing that differ from the loan terms set forth in closing documents made available to borrowers before scheduled closings under section 7(a) of this chapter;

the attorney general may pursue any enforcement action or penalty available under IC 24-9-8 for a violation of this article, including bringing an action under IC 24-5-0.5, as authorized by IC 24-9-8-1, for a violation of this article. In addition, the attorney general may file a complaint with any entity described in IC 4-6-12-4 that may have jurisdiction over the matter, as authorized by IC 4-6-12-5.

(c) If, after an investigation conducted under subsection (a), the attorney general determines that the creditor has violated:

- (1) the federal Truth in Lending Act (15 U.S.C. 1601 et seq.);
- (2) the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.), as amended; or
- (3) any other federal laws or regulations concerning mortgage lending;

the attorney general may, to the extent authorized by federal law, enforce compliance with the federal statutes or regulations described in this subsection or refer the suspected violation to the appropriate federal regulatory agencies, as authorized by IC 4-6-12-3.

(d) Any action by the attorney general under this section must be brought not later than five (5) years after:

- (1) the closing of the home loan that prompted the investigation, if the home loan proceeded to closing; or
- (2) the date of the first scheduled closing with respect to the home loan that prompted the investigation, if the home loan did not proceed to closing.

Sec. 9. (a) If:

- (1) the creditor or other parties having the information needed for a settlement service provider to make the closing documents available to a borrower as required under section 7 of this chapter have provided the needed information;
- (2) the information provided by the creditor or other parties is complete; and
- (3) the settlement service provider knowingly or willfully fails to make the closing documents available to the borrower as

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1 **required under section 7 of this chapter;**
 2 **the settlement service provider is subject to a civil penalty of**
 3 **twenty-five dollars (\$25), unless the borrower has waived the**
 4 **borrower's right to receive the closing documents under section**
 5 **7(d) of this chapter.**

6 **(b) A penalty described in subsection (a):**

- 7 **(1) may be enforced by the state agency that has**
 8 **administrative jurisdiction over the settlement service**
 9 **provider in the same manner that the agency enforces the**
 10 **payment of fees or other penalties payable to the agency; and**
 11 **(2) shall be paid into the home ownership education account**
 12 **established by IC 5-20-1-27.**

13 **(c) A settlement service provider is not liable for any other**
 14 **damages claimed by a customer because of the settlement service**
 15 **provider's failure to comply with this chapter.**

16 SECTION 18. IC 24-9-5-1, AS AMENDED BY P.L.141-2005,
 17 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2009]: Sec. 1. (a) A person who purchases or is otherwise
 19 assigned a high cost home loan is subject to all affirmative claims and
 20 any defenses, except for an affirmative claim or defense pursuant to
 21 IC 24-9-3-7, with respect to the high cost home loan that the borrower
 22 could assert against a creditor or broker of the high cost home loan.
 23 However, this section does not apply if the purchaser or assignee
 24 demonstrates by a preponderance of the evidence that a reasonable
 25 person exercising ordinary due diligence could not determine that the
 26 loan was a high cost home loan. A purchaser or an assignee is
 27 presumed to have exercised reasonable due diligence if the purchaser
 28 or assignee:

- 29 (1) has in place at the time of the purchase or assignment of the
 30 subject loans, policies that expressly prohibit the purchase or
 31 acceptance of the assignment of any high cost home loans;
 32 (2) requires by contract that a seller or an assignor of home loans
 33 to the purchaser or assignee represents and warrants to the
 34 purchaser or assignee that either:
 35 (A) the seller or assignor will not sell or reassign any high cost
 36 home loans to the purchaser or assignee; or
 37 (B) the seller or assignor is a beneficiary of a representation
 38 and warranty from a previous seller or assignor to that effect;
 39 (3) exercises reasonable due diligence:
 40 (A) at the time of purchase or assignment of home loans; or
 41 (B) within a reasonable period after the purchase or
 42 assignment of home loans;

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intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high cost home loans; or

(4) satisfies the requirements of subdivisions (1) and (2) and establishes that a reasonable person exercising ordinary due diligence could not determine that the loan was a high cost home loan based on the:

(A) documentation required by the federal Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(B) itemization of the amount financed and other disbursement disclosures.

(b) A borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of a high cost home loan:

(1) a violation of IC 24-9-4-2 as a defense, claim, or counterclaim, after:

(A) an action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan is initiated;

(B) an action to collect on the loan or foreclose on the collateral securing the loan is initiated; or

(C) the loan is more than sixty (60) days in default; within three (3) years after the closing of a home loan;

(2) a violation of this article, **other than a violation or an alleged violation of IC 24-9-3-1.1(d)**, in connection to the high cost home loan as a defense, claim, or counterclaim in an original action within five (5) years after the closing of a high cost home loan; and

(3) any defense, claim, counterclaim, or action to enjoin foreclosure or preserve or obtain possession of the home that secures the loan, including a violation of this article after:

(A) an action to collect on the loan or foreclose on the collateral securing the loan is initiated;

(B) the debt arising from the loan is accelerated; or

(C) the loan is more than sixty (60) days in default; at any time during the term of a high cost home loan.

(c) In an action, a claim, or a counterclaim brought under subsection (b), the borrower may recover only amounts required to reduce or extinguish the borrower's liability under a home loan plus amounts required to recover costs, including reasonable attorney's fees.

(d) The provisions of this section are effective notwithstanding any other provision of law. This section shall not be construed to limit the substantive rights, remedies, or procedural rights available to a

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borrower against any creditor, assignee, or holder under any other law. The rights conferred on borrowers by subsections (a) and (b) are independent of each other and do not limit each other.

SECTION 19. IC 24-9-5-4, AS AMENDED BY P.L.3-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. **(a) This section does not apply to a violation or an alleged violation of IC 24-9-3-1.1(d).**

~~(a)~~ **(b)** A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

(1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to two (2) times the finance charges agreed to in the home loan agreement.

(3) Costs and reasonable attorney's fees.

~~(b)~~ **(c)** A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

~~(c)~~ **(d)** The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

~~(d)~~ **(e)** The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection ~~(e)~~, **(f)**, a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

~~(e)~~ **(f)** Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

(1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and

(2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

~~(f)~~ **(g)** An action under this chapter must be brought within five (5)

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years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

~~(g)~~ **(h)** An award of damages under subsection ~~(a)~~ **(b)** has priority over a civil penalty imposed under this article.

SECTION 20. IC 25-1-11-18, AS AMENDED BY P.L.194-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.

(11) Real estate review appraisals, if applicable.

SECTION 21. IC 25-34.1-6-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.5. (a) A violation of:**

- (1) IC 24-5-15; or**
- (2) IC 24-5.5;**

by a person licensed or required to be licensed under this article is a violation of this article.

(b) A person who commits a violation described in subsection (a) commits a Class A infraction and is subject to:

- (1) the enforcement procedures described in section 2 of this chapter; and**
- (2) any sanction that may be imposed by the commission under IC 25-1-11-12 for an act described in IC 25-1-11-11.**

SECTION 22. IC 25-34.1-8-7.5, AS AMENDED BY P.L.57-2007, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) The investigative fund is established to provide funds for administering and enforcing the provisions of this article, including investigating and taking enforcement action against

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1 real estate fraud and real estate appraisal fraud. The fund shall be
 2 administered by the attorney general and the professional licensing
 3 agency.

4 (b) The expenses of administering the fund shall be paid from the
 5 money in the fund. The fund consists of:

6 (1) money from a fee imposed upon licensed or certified
 7 appraisers and real estate brokers and salespersons under
 8 IC 25-34.1-2-7 and IC 25-34.1-3-9.5; **and**

9 (2) **civil penalties deposited in the fund under**
 10 **IC 24-5-23.5-11(d).**

11 (c) The treasurer of state shall invest the money in the fund not
 12 currently needed to meet the obligations of the fund in the same
 13 manner as other public money may be invested.

14 (d) Except as otherwise provided in this subsection, money in the
 15 fund at the end of a state fiscal year does not revert to the state general
 16 fund. If the total amount in the investigative fund exceeds seven
 17 hundred fifty thousand dollars (\$750,000) at the end of a state fiscal
 18 year after payment of all claims and expenses, the amount that exceeds
 19 seven hundred fifty thousand dollars (\$750,000) reverts to the state
 20 general fund.

21 (e) Money in the fund is continually appropriated for use by the
 22 attorney general and the licensing agency to administer and enforce the
 23 provisions of this article and to conduct investigations and take
 24 enforcement action against real estate and appraisal fraud under this
 25 article. The attorney general shall receive five dollars (\$5) of each fee
 26 collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5, and the licensing
 27 agency shall receive any amount that exceeds five dollars (\$5) of each
 28 fee collected under IC 25-34.1-2-7 and IC 25-34.1-3-9.5.

29 SECTION 23. IC 34-30-2-89.5 IS ADDED TO THE INDIANA
 30 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2009]: **Sec. 89.5. IC 23-2-5-15 (Concerning**
 32 **a person that recommends a home loan to, or procures a home loan**
 33 **on behalf of, a borrower in connection with a contract for the**
 34 **services of a loan broker).**

35 SECTION 24. IC 34-30-2-96.4 IS ADDED TO THE INDIANA
 36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2009]: **Sec. 96.4. IC 24-4.4-3-113 (Concerning**
 38 **a creditor that recommends or issues a first lien mortgage**
 39 **transaction to a debtor).**

40 SECTION 25. IC 34-30-2-96.6 IS ADDED TO THE INDIANA
 41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2008]: **Sec. 96.6. IC 24-9-5-1(b)(2)**

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1 **(Concerning a creditor that recommends or issues to, or procures**
2 **on behalf of, a borrower a home loan).**

3 SECTION 26. IC 34-30-2-96.7 IS ADDED TO THE INDIANA
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2008]: **Sec. 96.7. IC 24-9-5-4(a) (Concerning**
6 **a creditor that recommends or issues to, or procures on behalf of,**
7 **a borrower a home loan).**

8 SECTION 27. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1176, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1176 as introduced.)

BARDON, Chair

Committee Vote: yeas 11, nays 0.

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